

HOUSE _____ AMENDMENT NO. ____

Offered By

AMEND House Committee Substitute No. 2 for Senate Bill No. 976, Page 194, Section 559.115,
Line 69, by inserting after all of said Line, the following:

"565.005. 1. At a reasonable time before the commencement of the first stage of any trial
of murder in the first degree, forcible rape of a child under the age of twelve, or forcible sodomy
of a child under the age of twelve, at which the death penalty is not waived, the state and
defendant, upon request and without order of the court, shall serve counsel of the opposing party
with:

(1) A list of all aggravating or mitigating circumstances as provided in [subsection 1 of]
section 565.032 for murder in the first degree or section 565.415 for forcible rape of a child under
the age of twelve or forcible sodomy of a child under the age of twelve, which the party intends to
prove at the second stage of the trial;

(2) The names of all persons whom the party intends to call as witnesses at the second
stage of the trial;

(3) Copies or locations and custodian of any books, papers, documents, photographs or
objects which the party intends to offer at the second stage of the trial. If copies of such materials
are not supplied to opposing counsel, the party shall cause them to be made available for
inspection and copying without order of the court.

2. The disclosures required in subsection 1 of this section are supplemental to those

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1 required by rules of the supreme court relating to a continuing duty to disclose information, the
2 use of matters disclosed, matters not subject to disclosure, protective orders, and sanctions for
3 failure to comply with an applicable discovery rule or order, all of which shall also apply to any
4 disclosure required by this section.

5 565.006. 1. At any time before the commencement of the trial of a homicide [offense],
6 forcible rape of a child under the age of twelve, or forcible sodomy of a child under the age of
7 twelve, the defendant may, with the assent of the court, waive a trial by jury and agree to submit
8 all issues in the case to the court, whose finding shall have the force and effect of a verdict of a
9 jury. Such a waiver must include a waiver of a trial by jury of all issues and offenses charged in
10 the case, including the punishment to be assessed and imposed if the defendant is found guilty.

11 2. No defendant who pleads guilty to a homicide [offense], forcible rape of a child under
12 the age of twelve, or forcible sodomy of a child under the age of twelve, or who is found guilty of
13 a homicide [offense], forcible rape of a child under the age of twelve, or forcible sodomy of a
14 child under the age of twelve after trial to the court without a jury shall be permitted a trial by jury
15 on the issue of the punishment to be imposed, except by agreement of the state.

16 3. If a defendant is found guilty of murder in the first degree, forcible rape of a child under
17 the age of twelve, or forcible sodomy of a child under the age of twelve after a jury trial in which
18 the state has not waived the death penalty, the defendant may not waive a jury trial of the issue of
19 the punishment to be imposed, except by agreement with the state and the court.

20 4. Any waiver of a jury trial and agreement permitted by this section shall be entered in
21 the court record.

22 565.035. 1. Whenever the death penalty is imposed in any case, and upon the judgment
23 becoming final in the trial court, the sentence shall be reviewed on the record by the supreme
24 court of Missouri. The circuit clerk of the court trying the case, within ten days after receiving the
25 transcript, shall transmit the entire record and transcript to the supreme court together with a
26 notice prepared by the circuit clerk and a report prepared by the trial judge. The notice shall set
27 forth the title and docket number of the case, the name of the defendant and the name and address
28 of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed.

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1 The report by the judge shall be in the form of a standard questionnaire prepared and supplied by
2 the supreme court of Missouri.

3 2. The supreme court of Missouri shall consider the punishment as well as any errors
4 enumerated by way of appeal.

5 3. With regard to the sentence, the supreme court shall determine:

6 (1) Whether the sentence of death was imposed under the influence of passion, prejudice,
7 or any other arbitrary factor; and

8 (2) Whether the evidence supports the jury's or judge's finding of a statutory aggravating
9 circumstance as enumerated in subsection 2 of section 565.032 or subsection 2 of section 565.435
10 and any other circumstance found;

11 (3) Whether the sentence of death is excessive or disproportionate to the penalty imposed
12 in similar cases, considering both the crime, the strength of the evidence and the defendant.

13 4. Both the defendant and the state shall have the right to submit briefs within the time
14 provided by the supreme court, and to present oral argument to the supreme court.

15 5. The supreme court shall include in its decision a reference to those similar cases which
16 it took into consideration. In addition to its authority regarding correction of errors, the supreme
17 court, with regard to review of death sentences, shall be authorized to:

18 (1) Affirm the sentence of death; or

19 (2) Set the sentence aside and resentence the defendant to life imprisonment without
20 eligibility for probation, parole, or release except by act of the governor; or

21 (3) Set the sentence aside and remand the case for retrial of the punishment hearing. A
22 new jury shall be selected or a jury may be waived by agreement of both parties and then the
23 punishment trial shall proceed in accordance with this chapter, with the exception that the
24 evidence of the guilty verdict shall be admissible in the new trial together with the official
25 transcript of any testimony and evidence properly admitted in each stage of the original trial where
26 relevant to determine punishment.

27 6. There shall be an assistant to the supreme court, who shall be an attorney appointed by
28 the supreme court and who shall serve at the pleasure of the court. The court shall accumulate the

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1 records of all cases in which the sentence of death or life imprisonment without probation or
2 parole was imposed after May 26, 1977, or such earlier date as the court may deem appropriate.
3 The assistant shall provide the court with whatever extracted information the court desires with
4 respect thereto, including but not limited to a synopsis or brief of the facts in the record
5 concerning the crime and the defendant. The court shall be authorized to employ an appropriate
6 staff, within the limits of appropriations made for that purpose, and such methods to compile such
7 data as are deemed by the supreme court to be appropriate and relevant to the statutory questions
8 concerning the validity of the sentence. The office of the assistant to the supreme court shall be
9 attached to the office of the clerk of the supreme court for administrative purposes.

10 7. In addition to the mandatory sentence review, there shall be a right of direct appeal of
11 the conviction to the supreme court of Missouri. This right of appeal may be waived by the
12 defendant. If an appeal is taken, the appeal and the sentence review shall be consolidated for
13 consideration. The court shall render its decision on legal errors enumerated, the factual
14 substantiation of the verdict, and the validity of the sentence.

15 565.040. 1. In the event that the death penalty provided in this chapter is held to be
16 unconstitutional, any person convicted of murder in the first degree, forcible rape of a child under
17 the age of twelve, or forcible sodomy of a child under the age of twelve shall be sentenced by the
18 court to life imprisonment without eligibility for probation, parole, or release except by act of the
19 governor, with the exception that when a specific aggravating circumstance found in a case is held
20 to be unconstitutional or invalid for another reason, the supreme court of Missouri is further
21 authorized to remand the case for resentencing or retrial of the punishment pursuant to subsection
22 5 of section 565.036.

23 2. In the event that any death sentence imposed pursuant to this chapter is held to be
24 unconstitutional, the trial court which previously sentenced the defendant to death shall cause the
25 defendant to be brought before the court and shall sentence the defendant to life imprisonment
26 without eligibility for probation, parole, or release except by act of the governor, with the
27 exception that when a specific aggravating circumstance found in a case is held to be inapplicable,
28 unconstitutional or invalid for another reason, the supreme court of Missouri is further authorized

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1 to remand the case for retrial of the punishment pursuant to subsection 5 of section 565.035."; and

2 _____
3 FURTHER AMEND said Bill, Page 195, Section 565.084, Line 20, by inserting after all of said
4 Line, the following:

5 "565.425. 1. Except as provided in subsections 2, 3, and 4 of this section, no forcible rape
6 of a child under the age of twelve offense may be tried together with any offense other than
7 forcible rape of a child under the age of twelve and no forcible sodomy of a child under the age of
8 twelve offense may be tried together with any offense other than forcible sodomy of a child under
9 the age of twelve. In the event of a joinder of forcible rape of a child under the age of twelve
10 offenses or forcible sodomy of a child under the age of twelve offenses, all offenses charged
11 which are supported by the evidence in the case shall, when requested by one of the parties or the
12 court, be submitted to the jury or, in a jury-waived trial, considered by the judge.

13 2. A count charging any offense of forcible rape of a child under the age of twelve of a
14 particular individual may be joined in an indictment or information and tried with one or more
15 counts charging alternatively any other forcible rape of a child under the age of twelve or offense
16 other than forcible rape of a child under the age of twelve committed against that individual. A
17 count charging any offense of forcible sodomy of a child under the age of twelve of a particular
18 individual may be joined in an indictment or information and tried with one or more counts
19 charging alternatively any other forcible sodomy of a child under the age of twelve or offense
20 other than forcible sodomy of a child under the age of twelve committed against that individual.
21 The state shall not be required to make an election as to the alternative count on which it will
22 proceed. This subsection in no way limits the right to try in the conjunctive, where they are
23 properly joined under subsection 1 of this section, either:

24 (1) Separate offenses other than forcible rape of a child under the age of twelve or
25 separate offenses of forcible rape of a child under the age of twelve committed against different
26 individuals;

27 (2) Separate offenses other than forcible sodomy of a child under the age of twelve or
28 separate offenses of forcible sodomy of a child under the age of twelve committed against
29 different individuals.

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1 3. (1) When a defendant has been charged and proven before trial to be a prior offender
2 pursuant to chapter 558, RSMo, so that the judge shall assess punishment and not a jury for an
3 offense other than forcible rape of a child under the age of twelve, that offense may be tried and
4 submitted to the trier together with any forcible rape of a child under the age of twelve charge
5 with which it is lawfully joined. In such case the judge shall assess punishment on any offense
6 joined with a forcible rape of a child under the age of twelve charge according to law and, when
7 the trier is a jury, it shall be instructed upon punishment on the charge of forcible rape of a child
8 under the age of twelve in accordance with section 565.430.

9 (2) When a defendant has been charged and proven before trial to be a prior offender
10 pursuant to chapter 558, RSMo, so that the judge shall assess punishment and not a jury for an
11 offense other than forcible sodomy of a child under the age of twelve, that offense may be tried
12 and submitted to the trier together with any forcible sodomy of a child under the age of twelve
13 charge with which it is lawfully joined. In such case the judge shall assess punishment on any
14 offense joined with a forcible sodomy of a child under the age of twelve charge according to law
15 and, when the trier is a jury, it shall be instructed upon punishment on the charge of forcible
16 sodomy of a child under the age of twelve in accordance with section 565.430.

17 4. When the state waives the death penalty for a forcible rape of a child under the age of
18 twelve offense or forcible sodomy of a child under the age of twelve offense, that offense may be
19 tried and submitted to the trier together with any other charge with which it is lawfully joined.

20 565.430. 1. Where forcible rape of a child under the age of twelve or forcible sodomy of
21 a child under the age of twelve is charged but not submitted or where the state waives the death
22 penalty, the submission to the trier and all subsequent proceedings in the case shall proceed as in
23 all other criminal cases with a single stage trial in which guilt and punishment are submitted
24 together.

25 2. Where forcible rape of a child under the age of twelve or forcible sodomy of a child
26 under the age of twelve is submitted to the trier without a waiver of the death penalty, the trial
27 shall proceed in two stages before the same trier. At the first stage, the trier shall decide only
28 whether the defendant is guilty or not guilty of any submitted offense. The issue of punishment
29 shall not be submitted to the trier at the first stage. If an offense is charged other than forcible

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1 rape of a child under the age of twelve in a count together with a count of forcible rape of a child
2 under the age of twelve, the trial judge shall assess punishment on any such offense according to
3 law, after the defendant is found guilty of such offense and after he finds the defendant to be a
4 prior offender pursuant to chapter 558, RSMo. If an offense is charged other than forcible
5 sodomy of a child under the age of twelve in a count together with a count of forcible sodomy of a
6 child under the age of twelve, the trial judge shall assess punishment on any such offense
7 according to law, after the defendant is found guilty of such offense and after he finds the
8 defendant to be a prior offender pursuant to chapter 558, RSMo.

9 3. If the trier at the first stage of a trial where the death penalty was not waived finds the
10 defendant guilty of forcible rape of a child under the age of twelve or forcible sodomy of a child
11 under the age of twelve, a second stage of the trial shall proceed at which the only issue shall be
12 the punishment to be assessed and declared. Evidence in aggravation and mitigation of
13 punishment, including but not limited to evidence supporting any of the aggravating or mitigating
14 circumstances listed in subsection 2 or 3 of section 565.435, may be presented subject to the rules
15 of evidence at criminal trials. Such evidence may include, within the discretion of the court,
16 evidence concerning the victim and the impact of the crime upon the family of the victim and
17 others. Rebuttal and surrebuttal evidence may be presented. The state shall be the first to
18 proceed. If the trier is a jury, it shall be instructed on the law. The attorneys may then argue the
19 issue of punishment to the jury, and the state shall have the right to open and close the argument.
20 The trier shall assess and declare the punishment at life imprisonment without eligibility for
21 probation, parole, or release except by act of the governor:

22 (1) If the trier finds by a preponderance of the evidence that the defendant is mentally
23 retarded; or

24 (2) If the trier does not find beyond a reasonable doubt at least one of the aggravating
25 circumstances set out in subsection 2 of section 565.435; or

26 (3) If the trier concludes that there is evidence in mitigation of punishment, including but
27 not limited to evidence supporting the mitigating circumstances listed in subsection 3 of section
28 565.435, which is sufficient to outweigh the evidence in aggravation of punishment found by the
29 trier; or

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1 (4) If the trier decides under all of the circumstances not to assess and declare the
2 punishment at death. If the trier is a jury it shall be so instructed.
3 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out
4 in writing the aggravating circumstance or circumstances listed in subsection 2 of section 565.435
5 which it found beyond a reasonable doubt. If the trier is a jury, it shall be instructed before the
6 case is submitted that if it is unable to decide or agree upon the punishment the court shall assess
7 and declare the punishment at life imprisonment without eligibility for probation, parole, or
8 release except by act of the governor or death. The court shall follow the same procedure as set
9 out in this section whenever it is required to determine punishment for forcible rape of a child
10 under the age of twelve or forcible sodomy of a child under the age of twelve.

11 4. Upon written agreement of the parties and with leave of the court, the issue of the
12 defendant's mental retardation may be taken up by the court and decided prior to trial without
13 prejudicing the defendant's right to have the issue submitted to the trier of fact as provided in
14 subsection 3 of this section.

15 5. As used in this section, the terms "mental retardation" or "mentally retarded" refer to a
16 condition involving substantial limitations in general functioning characterized by significantly
17 subaverage intellectual functioning with continual extensive related deficits and limitations in two
18 or more adaptive behaviors such as communication, self-care, home living, social skills,
19 community use, self-direction, health and safety, functional academics, leisure and work, which
20 conditions are manifested and documented before eighteen years of age.

21 6. The provisions of this section shall only govern offenses committed on or after August
22 28, 2008.

23 565.435. 1. In all cases of forcible rape of a child under the age of twelve or forcible
24 sodomy of a child under the age of twelve for which the death penalty is authorized, the judge in a
25 jury-waived trial shall consider, or he or she shall include in his or her instructions to the jury for
26 it to consider:

27 (1) Whether an aggravating circumstance or circumstances enumerated in subsection 2 of
28 this section is established by the evidence beyond a reasonable doubt; and

29 (2) If an aggravating circumstance or circumstances is proven beyond a reasonable doubt,

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1 whether the evidence as a whole justifies a sentence of death or a sentence of life imprisonment
2 without eligibility for probation, parole, or release except by act of the governor. In determining
3 the issues enumerated in this subdivision and subdivision (1) of this subsection, the trier shall
4 consider all evidence which it finds to be in aggravation or mitigation of punishment, including
5 evidence received during the first stage of the trial and evidence supporting any of the aggravating
6 or mitigating circumstances set out in subsections 2 and 3 of this section. If the trier is a jury, it
7 shall not be instructed upon any specific evidence which may be in aggravation or mitigation of
8 punishment, but shall be instructed that each juror shall consider any evidence which he or she
9 considers to be aggravating or mitigating.

10 2. Aggravating circumstances for a forcible rape of a child under the age of twelve offense
11 or forcible sodomy of a child under the age of twelve offense shall be limited to the following:

12 (1) The offense was committed by a person with a prior record of pleading to or being
13 found guilty of forcible rape of a child under the age of twelve or forcible sodomy of a child under
14 the age of twelve, or the offense was committed by a person who has pleaded guilty to or been
15 found guilty of one or more serious assaultive criminal offenses;

16 (2) The offense was committed while the offender was engaged in the commission or
17 attempted commission of another unlawful rape or sodomy;

18 (3) The offender by his act of forcible rape of a child under the age of twelve or forcible
19 sodomy of a child under the age of twelve knowingly created a great risk of death to more than
20 one person by means of a weapon or device which would normally be hazardous to the lives of
21 more than one person;

22 (4) The offender committed the offense for himself or another, for the purpose of
23 receiving money or any other thing of monetary value from the victim of the forcible rape or
24 forcible sodomy or another;

25 (5) The offender caused or directed another to commit forcible rape of a child under the
26 age of twelve or forcible sodomy of a child under the age of twelve or committed forcible rape of
27 a child under the age of twelve or forcible sodomy of a child under the age of twelve as an agent
28 or employee of another person;

29 (6) The raped or sodomized individual was a witness or potential witness in any past or

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1 pending investigation or past or pending prosecution, and was raped or sodomized as a result of
2 his or her status as a witness or potential witness;

3 (7) The offense was committed during the commission of a crime which is part of a
4 pattern of criminal street gang activity as defined in section 578.421, RSMo;

5 (8) The offense was committed outrageously, wantonly vile, horribly, or inhumanely in
6 that it involved torture or depravity of mind;

7 (9) The offense was committed by a person in, or who escaped from, the lawful custody
8 of a peace officer or place of lawful confinement;

9 (10) The offense was committed while the defendant was engaged in the perpetration or
10 was aiding or encouraging another person to perpetrate or attempt to perpetrate a felony of any
11 degree of homicide, burglary, robbery, kidnapping or any felony offense under chapter 195,
12 RSMo.

13 3. Mitigating circumstances shall include the following:

14 (1) The defendant has no significant history of prior criminal activity;

15 (2) The offense was committed while the defendant was under the influence of extreme
16 mental or emotional disturbance;

17 (3) The capacity of the defendant to appreciate the criminality of his or her conduct or to
18 conform his or her conduct to the requirements of law was substantially impaired;

19 (4) The age of the defendant at the time of the crime;

20 (5) The defendant acted under the substantial domination of another person.

21 566.030. 1. A person commits the crime of forcible rape if such person has sexual
22 intercourse with another person by the use of forcible compulsion. Forcible compulsion includes
23 the use of a substance administered without a victim's knowledge or consent which renders the
24 victim physically or mentally impaired so as to be incapable of making an informed consent to
25 sexual intercourse.

26 2. Forcible rape or an attempt to commit forcible rape is a felony for which the authorized
27 term of imprisonment is life imprisonment or a term of years not less than five years, unless:

28 (1) In the course thereof the actor inflicts serious physical injury or displays a deadly
29 weapon or dangerous instrument in a threatening manner or subjects the victim to sexual

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1 intercourse or deviate sexual intercourse with more than one person, in which case the authorized
2 term of imprisonment is life imprisonment or a term of years not less than fifteen years; or

3 (2) The victim is a child less than twelve years of age, in which case [the required term of
4 imprisonment is life imprisonment without eligibility for probation or parole until the defendant
5 has served not less than thirty years of such sentence or unless the defendant has reached the age
6 of seventy-five years and has served at least fifteen years of such sentence. Subsection 4 of
7 section 558.019, RSMo, shall not apply to the sentence of a person who has pleaded guilty to or
8 has been found guilty of forcible rape when the victim is under the age of twelve, and "life
9 imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes
10 of this section], the punishment shall be either death or life imprisonment without eligibility for
11 probation, parole, or release except by act of the governor; except that, if a person has not reached
12 his or her eighteenth birthday at the time of the commission of the crime, the punishment shall be
13 life imprisonment without eligibility for probation, parole, or release except by an act of the
14 governor.

15 3. No person found guilty of or pleading guilty to forcible rape or an attempt to commit
16 forcible rape shall be granted a suspended imposition of sentence or suspended execution of
17 sentence.

18 566.060. 1. A person commits the crime of forcible sodomy if such person has deviate
19 sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion
20 includes the use of a substance administered without a victim's knowledge or consent which
21 renders the victim physically or mentally impaired so as to be incapable of making an informed
22 consent to sexual intercourse.

23 2. Forcible sodomy or an attempt to commit forcible sodomy is a felony for which the
24 authorized term of imprisonment is life imprisonment or a term of years not less than five years,
25 unless:

26 (1) In the course thereof the actor inflicts serious physical injury or displays a deadly
27 weapon or dangerous instrument in a threatening manner or subjects the victim to sexual
28 intercourse or deviate sexual intercourse with more than one person, in which case the authorized
29 term of imprisonment is life imprisonment or a term of years not less than ten years; or

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1 (2) The victim is a child less than twelve years of age, in which case [the required term of
2 imprisonment is life imprisonment without eligibility for probation or parole until the defendant
3 has served not less than thirty years of such sentence or unless the defendant has reached the age
4 of seventy-five years and has served at least fifteen years of such sentence. Subsection 4 of
5 section 558.019, RSMo, shall not apply to the sentence of a person who has pleaded guilty to or
6 has been found guilty of forcible sodomy when the victim is under the age of twelve, and "life
7 imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes
8 of this section], the punishment shall be either death or life imprisonment without eligibility for
9 probation, parole, or release except by act of the governor; except that, if a person has not reached
10 his or her eighteenth birthday at the time of the commission of the crime, the punishment shall be
11 life imprisonment without eligibility for probation, parole, or release except by an act of the
12 governor.

13 3. No person found guilty of or pleading guilty to forcible sodomy or an attempt to
14 commit forcible sodomy shall be granted a suspended imposition of sentence or suspended
15 execution of sentence."; and

16
17 FURTHER AMEND said Bill by amending the title, enacting clause, and intersectional references
18 accordingly.
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